

Office of the Attorney General



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**PAUL G. SUMMERS**  
ATTORNEY GENERAL AND REPORTER

MAILING ADDRESS

P.O. BOX 20207  
NASHVILLE, TN 37202

**MICHAEL E. MOORE**  
SOLICITOR GENERAL

CORDELL HULL AND JOHN SEVIER  
STATE OFFICE BUILDINGS

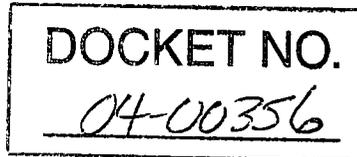
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**ANDY D. BENNETT**  
CHIEF DEPUTY ATTORNEY GENERAL

**LUCY HONEY HAYNES**  
ASSOCIATE CHIEF DEPUTY  
ATTORNEY GENERAL

Reply to:  
**Consumer Advocate and Protection Division**  
Post Office Box 20207  
Nashville, TN 37202

October 15, 2004



Honorable Chairman Pat Miller  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

In Re: *Petition to Require Atmos Energy Corporation to Appear and Show Cause that its Rates are Just and Reasonable and that it is not Overearning and in Violation of Tennessee Law.*

Dear Chairman:

Attached are the original and thirteen copies of the Consumer Advocate's *Petition to Require Atmos Energy Corporation to Appear and Show Cause that its Rates are Just and Reasonable and that it is not Overearning and in Violation of Tennessee Law.* Copies will be served upon Atmos Energy Corporation and their counsel.

Sincerely,

A handwritten signature in black ink that reads "Vance Broemel".

Vance Broemel

Assistant Attorney General

cc: Counsel of Record

**IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**IN RE:** )  
 )  
**PETITION TO REQUIRE ATMOS** ) **DOCKET NO. 04-\_\_\_\_\_**  
**ENERGY CORP. TO APPEAR AND** )  
**SHOW CAUSE THAT ITS RATES ARE** )  
**JUST AND REASONABLE AND THAT** )  
**IT IS NOT OVEREARNING IN** )  
**VIOLATION OF TENNESSEE LAW** )

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**PETITION TO REQUIRE ATMOS ENERGY CORPORATION TO APPEAR AND  
SHOW CAUSE THAT ITS RATES ARE JUST AND REASONABLE AND THAT IT IS  
NOT OVEREARNING IN VIOLATION OF TENNESSEE LAW**

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Comes Paul G. Summers, the Attorney General for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of the Attorney General (hereinafter “Consumer Advocate”), pursuant to Tenn. Code Ann. § 65-4-118(c)(2)(A), § 65-2-106, and § 65-5-201, and requests the Tennessee Regulatory Authority (“TRA”) to initiate a show cause proceeding to investigate the justness and reasonableness of Atmos Energy Corporation’s rates pursuant to the powers granted to the TRA by Tenn. Code Ann. § 65-5-201. The Consumer Advocate requests that the TRA issue a show cause order under the powers provided by § 65-2-106 and direct Atmos Energy Corporation (“Atmos”) to show cause why rates to its customers should not be reduced to eliminate excessive earnings. For cause, the Petitioner would show as follows:

1. The Consumer Advocate is authorized by Tenn. Code Ann. § 65-4-118 (c)(2)(A) to initiate a contested case, and participate or intervene in proceedings to represent the interests of Tennessee consumers in accordance with the Uniform Administrative Procedures Act (“UAPA”).

2. Atmos is a utility regulated by the Tennessee Regulatory Authority (“TRA”), offering

natural gas service to Tennessee consumers.

3. The Legislature created the Tennessee Regulatory Authority to protect consumers from being charged excessive and unreasonable rates for regulated utilities operating in Tennessee. When there is a prima facie showing that rates are unjust and unreasonable, as the Consumer Advocate shows herein, the TRA must exercise its power to determine the justness and reasonableness of such rates pursuant to Tenn. Code Ann. § 65-5-201. If the Authority fails to expeditiously set just and reasonable rates it will unduly prejudice Tennessee consumers and cause them to suffer irreparable harm.

4. Atmos's own financial data, and a recent TRA decision regarding another natural gas company, Chattanooga Gas Company, demonstrate clearly and unmistakably that rates to Tennessee consumers charged by Atmos have been and will continue to be excessive, unjust and unreasonable.

5. On August 30, 2004, the Authority granted a 7.42 percent fair rate of return to Chattanooga Gas Company (CGC) for its investments in Tennessee, in TRA Docket No. 04-00034. CGC subsequently filed tariffs incorporating the fair rate of return into the prices that consumers pay for the natural gas services provided by CGC. *See* Affidavit of Stephen N. Brown at paragraph 6, attached as Exhibit A ("Brown Affidavit").

6. On August 31, 2004 Atmos filed a Form 3.03 with the TRA. The Form 3.03 shows Atmos earning a rate of return of 10.45 percent on its investments in Tennessee as of the twelve-month period ending June 30, 2004. *See* Brown Affidavit at paragraph 7 (a copy of the Form 3.03 is attached to the Brown Affidavit).

7. Thus, Atmos's current rate of return in Tennessee is not a fair rate of return because it grossly exceeds what the TRA has recently determined to be a fair rate of return.

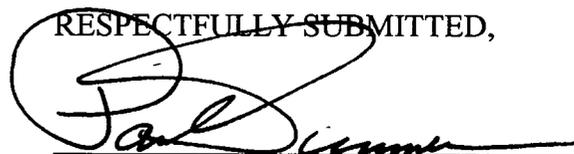
8. Tennessee's consumers are paying rates for natural gas service from Atmos that are not just and reasonable because such rates provide Atmos with earnings which substantially exceed a fair rate of return. Atmos is annually earning \$6.6 million more from its natural gas service provided to Tennessee's consumers than Atmos will earn when its tariffs incorporate a fair rate of return equal to 7.42 percent. When Atmos's tariffs incorporate a fair rate of return equal to 7.42 percent, Atmos's revenues for natural gas service in Tennessee will decline by 3.9 percent. *See* Brown Affidavit at paragraph 9.

9. Revising Atmos's tariffs to incorporate a fair rate of return will lower Atmos's prices for natural gas service for consumers in Blount County, Carter County, Greene County, Hamblin County, Hancock County, Johnson County, Maury County, Moore County, Obion County, Rutherford County, Sullivan County, Washington County, and Williamson County. *See* Brown Affidavit at paragraph 10.

10. Only by initiating this show cause proceeding can the Consumer Advocate work to protect the public interest.

Wherefore, the Petitioner prays the Authority to grant its request to initiate a show cause proceeding to investigate the justness and reasonableness of Atmos's rates and to issue a show cause order directing Atmos to show cause why its rates to Tennessee consumers should not be reduced to eliminate excessive earnings, and grant such other relief as may be appropriate.

RESPECTFULLY SUBMITTED,



PAUL G. SUMMERS, B.P.R. #6285  
Attorney General  
State of Tennessee

*Vance L. Broemel*

VANCE L. BROEMEL, B.P.R. #01142

Assistant Attorney General

Office of the Attorney General

Consumer Advocate and Protection Division

P.O. Box 20207

Nashville, Tennessee 37202

(615) 741-8733

Dated: October 15<sup>th</sup> 2004

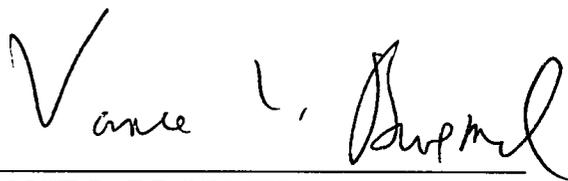
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served via hand delivery or facsimile on October 15, 2004

Joe Conner  
Baker, Donelson, Beaman & Caldwell  
1800 Republic Centre  
633 Chestnut Street  
Chattanooga, Tennessee 37450-1800

Richard Collier, Esq.  
General Counsel  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

Patricia J. Childers  
VP - Regulatory Affairs  
Atmos/United Cities Gas Corporation  
810 Crescent Centre Drive, Suite 600  
Franklin, Tennessee 37064-5393



VANCE L. BROEMEL  
Assistant Attorney General

**IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**IN RE:** )  
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**PETITION TO REQUIRE ATMOS** ) **DOCKET NO. 04-\_\_\_\_\_**  
**ENERGY CORP. TO APPEAR AND** )  
**SHOW CAUSE THAT ITS RATES** )  
**ARE JUST AND REASONABLE** )  
**AND THAT IT IS NOT** )  
**OVEREARNING IN VIOLATION OF** )  
**TENNESSEE LAW** )

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**AFFIDAVIT OF STEPHEN N. BROWN**

---

I, Stephen N. Brown, being duly sworn, depose and say:

1. I am an economist in the Consumer Advocate and Protection Division, Office of the Attorney General. In that capacity, I review utility filings and information relating to rates and rate changes and follow the economic conditions that affect the companies. Also, I assess and evaluate facts for the Consumer Advocate and Protection Division and other entities within the Office of the Attorney General.

2. From 1986 to 1995 I was employed by the Iowa Utilities Board as Chief of the Bureau of Energy Efficiency, Auditing and Research, and Utility Specialist and State Liaison Officer to the U.S. Nuclear Regulatory Commission. From 1984 to 1986, I worked for Houston Lighting & Power as Supervisor of Rate Design. From 1982 to 1984, I worked for Arizona Electric Power Cooperative as a Rate Analyst. From 1979 to 1982, I worked for Tri-State Generation and Transmission Association as Power Requirements Supervisor and Rate Specialist. From 1979 through 2004, my work spanned many issues including cost of service studies, rate design issues, telecommunications issues and matters related to the disposal of

nuclear waste.

3. I have an M.S. in Regulatory Economics from the University of Wyoming, an M.S. and Ph.D. from the University of Denver, and a B. A. from Colorado State University.

4. I am providing this affidavit in regard to the Attorney General's Show Cause petition before the Tennessee Regulatory Authority (TRA).

5. In particular, I am giving my opinion regarding the economic basis of the Show Cause petition filed by the Attorney General.

6. On August 30, 2004, the Authority granted a 7.42 percent fair rate of return to Chattanooga Gas Company (CGC) for its investments in Tennessee, in TRA Docket No. 04-00034. Accordingly, CGC subsequently filed tariffs incorporating the fair rate of return into the prices that consumers pay for the natural gas services provided by CGC.

7. On August 31, 2004 Atmos Energy Corporation (AEC) filed a Form 3.03 with the TRA. The Form 3.03 shows AEC earning a rate of return of 10.45 percent on its investments in Tennessee as of the twelve-month period ending June 30, 2004. A copy of this Form 3.03 is attached to my Affidavit as Exhibit A.

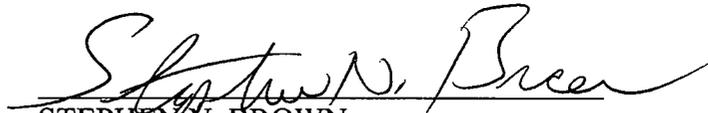
8. In my opinion, AEC's current rate of return in Tennessee is not a fair rate of return.

9. Tennessee's consumers are paying certain rates for natural gas service from AEC, but such rates are not just and reasonable because such rates provide AEC with earnings which substantially exceed a fair rate of return. AEC is annually earning \$6.6 million more from its natural gas service provided to Tennessee's consumers than AEC will earn when its tariffs incorporate a fair-rate-of-return equal to 7.42 percent. When AEC's tariffs incorporate a fair rate of return equal to 7.42 percent, AEC's revenues for natural gas service in Tennessee will decline

by 3.9 percent.

10. Revising AEC's tariffs to incorporate a fair rate of return will lower AEC's prices for natural gas service for consumers in Blount County, Carter County, Greene County, Hamblin County, Hancock County, Johnson County, Maury County, Moore County, Obion County, Rutherford County, Sullivan County, Washington County, and Williamson County.

11. Tennessee's consumers who receive natural gas service from AEC are economically burdened with prices higher than needed for AEC to deliver services. Such prices should be reduced to achieve just and reasonable utility rates for Tennessee's consumers .



STEPHEN N. BROWN

Economist

Office of the Attorney General

Consumer Advocate and Protection Division

P.O. Box 20207

Nashville, Tennessee 37202

(615) 741-3132

Dated: October 14, 2004

Sworn and subscribed before  
me this 14<sup>th</sup> day of October, 2004



NOTARY PUBLIC

My commission expires: 7/21/2007

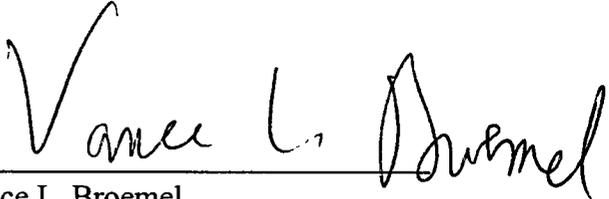
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and exact copies of the forgoing documents were delivered via facsimile to the parties of record in this action on this 7<sup>th</sup> day of October, 2004.

Joe Conner  
Baker, Donelson, Beaman & Caldwell  
1800 Republic Centre  
633 Chestnut Street  
Chattanooga, Tennessee 37450-1800

Richard Collier, Esq.  
General Counsel  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

Patricia J. Childers  
VP - Regulatory Affairs  
Atmos/United Cities Gas Corporation  
810 Crescent Centre Drive, Suite 600  
Franklin, Tennessee 37064-5393

  
\_\_\_\_\_  
Vance L. Broemel

ITEM	Month-to-Date		Year-to-Date		12 Months-to-Date	
	This Year	Last Year	This Year	Last Year	This Year	Last Year
	(b)	(c)	(d)	(e)	(f)	(g)
1 Residential Sales.....	4,859,748	5,318,791	98,270,650	99,345,457	163,260,986	157,926,342
2 Commercial & Industrial Sales..	0	0	0	0	0	0
3 Other Sales.....	532,066	511,082	4,141,050	4,116,880	7,463,746	7,476,842
<b>5 Total Operating Revenues</b>	<b>5,391,814</b>	<b>5,829,873</b>	<b>102,411,700</b>	<b>103,462,337</b>	<b>170,724,732</b>	<b>165,403,184</b>
6 Production.. . . . .	3,235,691	3,588,180	71,265,242	73,945,226	117,147,266	116,574,310
7 Storage, Trans & Dist -Oper....	326,817	306,308	2,174,070	1,793,271	3,865,686	3,508,418
8 Storage, Trans & Dist -Mtnce. ....	28,461	40,722	192,271	423,430	483,218	1,023,030
9 Customer Accounts Expense . . . . .	(702,369)	173,108	483,720	1,425,538	1,758,488	1,998,497
10 Sales Expense.....	11,671	19,555	62,364	93,987	122,708	179,072
11 Adm. & Gen'l Expense.....	431,563	684,094	4,860,996	4,995,168	10,663,672	9,865,663
12 Deprn. & Amort Expense. ....	915,631	926,907	5,685,898	5,415,707	11,295,240	10,972,617
13 Taxes Other Than Income Taxes .....	262,530	384,289	2,515,353	3,249,832	4,908,595	5,161,475
14 Income Taxes .. . . . .	185,273	(300,538)	4,846,914	3,623,919	5,706,566	3,975,334
<b>15 Total Operating Expenses.....</b>	<b>4,695,268</b>	<b>5,822,626</b>	<b>92,086,828</b>	<b>94,966,078</b>	<b>155,951,440</b>	<b>153,258,417</b>
16 Net Operating Income.. ....	696,546	7,247	10,324,872	8,496,259	14,773,292	12,144,767
17 Other Income. ....	178,269	96,288	746,259	641,687	1,182,662	1,396,875
18 Misc. Income Deductions .. . . .	8,932	7,860	38,943	18,618	86,703	18,618
19 Interest Charges.....	574,875	567,729	3,419,168	3,427,259	6,905,982	7,278,990
<b>20 Net Income.....</b>	<b>291,008</b>	<b>(472,054)</b>	<b>7,613,020</b>	<b>5,692,068</b>	<b>8,963,269</b>	<b>6,244,034</b>

Selected Balance Sheet Items *	Co. Balance at Month-End		Average 12 Months-to-Date	
	This Year (h)	Last Year (i)	This Year (j)	Last Year (k)

21 Utility Plant in Service.....	287,492,999	278,398,311	282,317,611	272,723,899
22 Construction Work in Progress....	4,906,848	4,794,749	4,259,908	6,153,359
23 Acquisition Adjustments, Net....	0	0	0	0
24 Property Held for Future Use.....	0	0	0	0
25 Depreciation.....	120,040,017	114,454,763	115,852,987	110,599,309
26 Materials and Supplies. ....	4,724,972	3,173,414	5,189,163	3,541,015
27 Unamortized ITC.....	781,205	930,951	806,163	957,822
28 Deferred Federal Income Tax ...	30,950,219	22,799,947	29,716,365	24,971,635
29 Contributions in aid of Const....	0	0	0	0
30 Customer Advances for Const.....	29,902	29,920	29,905	29,773
31 Preferred & Preference Stock....	0	0	0	0
32 Common Stock .. . . . .	262,909	255,105	258,952	221,617
33 Premium on Cap Stk. & Other Cap	762,384,917	727,606,546	745,610,739	568,827,128
34 Retained Earnings . . . . .	(103,932,043)	(96,459,240)	(82,087,651)	(60,913,199)
35 Long-Term Debt .. . . . .	772,303,308	773,003,308	857,785,402	791,945,386

June-04

Type of Customer (a)	Number Billed at the End of Period	
	This Year (b)	Last Year (c)
36. Residential.....	101,043	101,810
37. Commercial.....	14,369	14,008
38. Industrial Firm....	292	299
39. Interruptible.....	171	150
40. Other.....	143	117
	<b>116,018</b>	<b>116,384</b>

INSTRUCTIONS

1. This report is required of all gas companies which had operating revenues for the preceding year in excess of \$1,500,000 as provided in the Commission's rules. Prepare on a typewriter and file within 60 days after the end of the month covered by the report. Show amounts adjusted to the nearest dollar.
2. If any amount for the current month differs materially from that for the previous month or the same month a year ago and the difference is not self-explanatory notate the amount and explain the occasioning facts under "Remarks".
3. List the type of other customers in the customer service data section under "Remarks".

REMARKS

I certify that to the best of my knowledge and belief this is a true and correct report.

Date. August 31, 2004

Title and Address

(Signed)



Sr. Analyst  
Atmos Energy Corporation  
381 Riverside Drive  
Suite 440  
Franklin, TN 37064-8934

ATMOS ENERGY CORPORATION  
 TENNESSEE SUPPLEMENTAL FINANCIAL DATA  
 TO THE TENNESSEE REGULATORY AUTHORITY 3.03 FOR  
 June-04

Line No.		Average for 12 Months to Date
1.	Gas plant in service	282,317,611
2.	Construction work in progress	4,259,908
3.	Materials and supplies/Storage gas	5,189,163
4.	Working capital	1,176,346
5.	Net elimination of intercompany leased property	7,849,793
6.	Unamortized Maryland Way Gain	(93,658)
7.	Total (L1 thru L6)	<u>300,699,163</u>
	Deductions:	
8.	Depreciation reserve	115,852,987
9.	Unpaid for portion of materials and supplies	106,768
10.	Customer deposits (a/c 235)	4,645,525
11.	Contributions and advances in aid of construction	29,905
12.	Accumulated deferred tax-accelerated depreciation	29,716,365
13.	Unamortized investment tax credit-pre 1971 (a/c254102)	0
14.	Total (L8 thru L13)	<u>150,351,551</u>
15.	Rate Base (L7-L14)	<u>150,347,612</u>
16.	Net Operating Income	14,773,292
17.	Accrued interest on customer deposits	(278,732)
18.	Allowance for funds used during construction	0
19.	Gain on sale of Maryland Way Property	20,244
20.	Elimination of leased property: Decreased rent	2,153,144
21.	Elimination of leased property: Increased depreciation expen	(235,269)
22.	Elimination of leased property: Tax effect	(719,199)
23.	Total (L16 thru L22)	<u>15,713,481</u>
24.	Rate of Return (L23 by L15)	<u>10.45%</u>

CONTINUING SURVEILLANCE CONSIDERATIONS. Estimate the effect on net income of very significant, known changes occurring within the period covered by this report which are not fully reflected in the revenue and expense amounts shown in the report.